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## Chapter 15: Labor Relations

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## CHAPTER 15

# Labor Relations

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### A. FEDERAL LEGISLATION

§15.1. **Civil rights and employment.** Title VII of the Civil Rights Act of 1964,<sup>1</sup> also referred to as the Equal Employment Opportunity Act and the Federal Fair Employment Practice Law, deals with the employment phases of civil rights. This Title becomes effective July 2, 1965. It prohibits discrimination in employment because of an individual's race, color, religion, sex,<sup>2</sup> or national origin. If for any one of these reasons an employer fails or refuses to hire, or discharges, or otherwise discriminates against any individual with respect to his compensation, terms, conditions, or privileges of employment, it is an unfair employment practice. Also declared unfair practices are employment advertisements mentioning race, color, religion, sex, or national origin; segregation or classification for such reasons which tends to deprive an individual of employment opportunities or adversely affects his status as an employee; discrimination in the admission of employees to training programs and apprenticeship plans; and discrimination because an employee or applicant for employment has opposed an unlawful employment practice or has in any way participated in or assisted an investigation or proceeding under the act. Labor unions and employment agencies are also prohibited from engaging in discriminatory practices based on an individual's race, color, religion, sex, or national origin.<sup>3</sup>

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§15.1. 178 Stat. 253, 42 U.S.C.A. §2000e (1964 Supp.).

<sup>2</sup> Massachusetts employers in businesses affecting interstate commerce will be subject to three laws regulating sex discrimination in employment, including Title VII. See 77 Stat. 56, 29 U.S.C.A. §206(d) (1963); G.L., c. 149, §§105A-105C.

<sup>3</sup> Specifically it is an unfair employment practice for a union: "(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

"(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

An enforcement agency called the Equal Employment Opportunity Commission (EEOC) has been established by the act. When a charge of unfair employment practice is filed with it, it is required to investigate, and if it finds reasonable cause to believe that the charge is true, it will try to resolve the situation by conciliation. If the Commission fails to obtain voluntary compliance, it will send the aggrieved person written notice confirming this fact. Within thirty days after such written notification, the aggrieved person may file a civil action against the person alleged to have committed the unfair practice (employer, union, or employment agency) in the appropriate federal district court. If the court finds that the accused intentionally engaged in an unlawful employment practice, it may enjoin the practice and order affirmative action such as hiring or reinstatement with back pay. If the order is not complied with, contempt proceedings may result in possible fine or imprisonment, or both.

Title VII gives specific recognition to state antidiscrimination statutes, such as the Massachusetts Fair Employment Practice Law.<sup>4</sup> Where such state laws exist, charges must be filed initially with the state agency (such as the Massachusetts Commission Against Discrimination), and the federal agency will become involved only after the state agency has finished its proceedings or has failed to act. The Equal Employment Opportunity Commission is also authorized to cooperate with the state agency and utilize its services.

Coverage of employers and unions, in industries affecting interstate commerce, is geared to the number of employees or members; those having one hundred or more are covered beginning in 1965, while those having twenty-five or more are not covered until 1968. The act contains a number of exceptions,<sup>5</sup> exemptions,<sup>6</sup> and saving clauses,

"(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section." 78 Stat. 255, 42 U.S.C.A. §§2000e-2(c)(1) to 2000e-2(c)(3) (1964).

For an employment agency, it is an unfair employment practice to "fail or refuse to refer for employment, or otherwise to discriminate against, an individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin. . . . Id. §2000e-2(b).

<sup>4</sup> G.L., c. 151B; 78 Stat. 259, 42 U.S.C.A. §2000e-5b (1964).

<sup>5</sup> Exceptions include: a. from the term "employer": the United States, a corporation wholly owned by the United States, Indian tribes, a state, or a subdivision of a state, and private clubs (except labor organizations);

b. from the term "employment agency": all governmental agencies except the United States Employment Service and state or local employment agencies receiving federal aid. 78 Stat. 253, 42 U.S.C.A. §2000e (1964).

Also excepted from the statute are (1) discriminatory action based on religion, sex, or national origin, if any such factor is a bona fide occupational qualification reasonably necessary to the normal operation of the business; (2) discharge of or failure to hire an employee who does not have security clearance where the employer is subject to security regulations; (3) differences in wages or employment conditions pursuant to a seniority, merit, piecework, or incentive system or due to different locations; (4) discrimination against members of the Communist Party or Communist-front organizations; (5) differences in pay based upon sex which are

including one which states that no affirmative action granting preferential treatment or correcting imbalances on any percentage basis is to be required.<sup>7</sup> There are record-keeping provisions<sup>8</sup> and also a short statute of limitations. No proceedings may be initiated on a charge unless it is filed within ninety days after an alleged violation, except in states such as Massachusetts which have an applicable state law. In the latter event, the charge must be filed with the EEOC no later than thirty days after receipt of notice of termination of the state proceedings or 210 days after the alleged violation, whichever is earlier.

## B. FEDERAL DECISIONS

**§15.2. Pre-emption.** The question of federal versus state jurisdiction in labor cases continued to be a fruitful source of litigation. In one case in which the Supreme Court of the United States, in line with previous decisions, held that a state court had no power to enjoin peaceful picketing, it so ruled in spite of the state appellate court's holding that the case had become moot.<sup>1</sup> The Supreme Court held that the question of mootness was itself one of federal law.

A second case involving the pre-emption issue was *Local 20, Teamsters v. Morton*.<sup>2</sup> Here the union was sued in a federal district court for having caused damage to the plaintiff company by reason of its allegedly unlawful inducement to a boycott directed against secondary employers doing business with the plaintiff. The suit was based upon Section 303 of the Taft-Hartley Act, which grants the right to civil damages for certain kinds of secondary boycott action, and also

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permitted by the Equal Pay Act of 1963 (Fair Labor Standards Act, §6(d), 29 U.S.C.A. §206(d)), namely, seniority, merit, piecework, and incentive systems, or any factor other than sex; and (6) preferential treatment to Indians by employers operating on or near Indian reservations.

<sup>6</sup> Exemptions include an employer with respect to aliens employed outside any state; religious corporations, associations, or societies in carrying out religious activities; and educational institutions in employing persons to perform work connected with educational activities. 78 Stat. 255, 42 U.S.C.A. §2000e-1 (1964).

<sup>7</sup> Id. §2000e-2(j). See also 78 Stat. 262, 42 U.S.C.A. §2000e-7 (1964), which states that this act does not relieve any liability incurred under any present or future state or local law, except those requiring an act which would be unlawful under this title, and 78 Stat. 265, 42 U.S.C.A. §2000e-11 (1964), which preserves any laws or rules granting special rights or preferences for veterans.

<sup>8</sup> 78 Stat. 262, 42 U.S.C.A. §2000e-8(c) (1964), requires employers to make and keep records relevant to determinations of whether unlawful employment practices have been or are being committed. Such records are subject to the rules and regulations set up by the EEOC. Employers are required to maintain a list of applicants, in chronological order according to receipt of applications, who wish to participate in training programs. Relief may be granted when record-keeping and reporting impose an undue hardship.

§15.2. <sup>1</sup> *Liner v. Jafco, Inc.*, 375 U.S. 301, 84 Sup. Ct. 391, 11 L. Ed. 2d 301 (1964).

<sup>2</sup> 377 U.S. 252, 84 Sup. Ct. 1253, 12 L. Ed. 2d 280 (1964).

on Ohio common law. The trial court made separate findings on damages, awarding a certain amount for the Section 303 violation and other amounts for conduct found unlawful under Ohio law, but not prohibited by Taft-Hartley. The Sixth Circuit affirmed but the Supreme Court reversed except on the award of damages under Section 303. The importance of the decision is that some of the secondary activities appear to have been "neither protected nor prohibited" by federal law. The Court specifically alluded to this and stated that it is still necessary to determine whether by enacting Section 303 "Congress occupied this field and closed it to state regulation." The answer to the basic question of whether "incompatible doctrines of local law must give way to principles of federal labor law" ultimately depends upon "whether the application of state law . . . would operate to frustrate the purpose of the federal legislation."<sup>3</sup>

There were two United States Supreme Court labor law cases in which states were permitted to act. One involved Section 14(b) of the National Labor Relations Act, as amended.<sup>4</sup> This is the section permitting states to enact so-called right-to-work laws, which outlaw union-security agreements. The Court held that not only the National Labor Relations Board, but the Florida courts as well have jurisdiction to enforce the state's prohibition against an agency shop clause.<sup>5</sup> The conflict here between state and federal law is specifically sanctioned by Congress "with direction to give the right of way to state laws barring the execution and enforcement of union-security agreements."<sup>6</sup> The Court noted that the rule of federal pre-emption in labor law cases "does not state a constitutional principle; it merely rationalizes the problem of coexistence between federal and state regulatory schemes in the field of labor relations."<sup>7</sup>

The second case in which a state court was held to have jurisdiction in spite of a federal pre-emption contention was *Carey v. Westinghouse Corp.*<sup>8</sup> Here Union A, representing production and maintenance employees, brought suit against the company in the New York courts to compel arbitration of the question of whether certain employees in the engineering laboratory were performing production and maintenance work. These employees were represented by Union B, which had been certified by the NLRB as bargaining agent for all technical employees. The New York court held that the matter was within the exclusive jurisdiction of the NLRB, since it involved a definition of bargaining units, and therefore ordered dismissal of the suit to compel arbitration. The Supreme Court reversed. The Court's decision is not surprising in view of its affection for labor

<sup>3</sup> Id. at 258, 84 Sup. Ct. at 1257, 12 L. Ed. 2d at 286.

<sup>4</sup> 61 Stat. 151, 29 U.S.C.A. §164(b) (1962).

<sup>5</sup> Retail Clerks v. Schermerhorn, 375 U.S. 96, 84 Sup. Ct. 219, 11 L. Ed. 2d 179 (1963).

<sup>6</sup> Id. at 103, 84 Sup. Ct. at 222, 11 L. Ed. 2d at 184.

<sup>7</sup> Ibid.

<sup>8</sup> 375 U.S. 261, 84 Sup. Ct. 401, 11 L. Ed. 2d 320 (1964).

arbitration.<sup>9</sup> While directing arbitration to proceed, the Court is not thereby precluding the NLRB's taking jurisdiction over the same dispute, since "[t]he superior authority of the Board may be invoked at any time."<sup>10</sup> One commentator has referred to the case as being "something less than a sure solution to the several difficult problems inherent in the circumstances."<sup>11</sup>

§15.3. **Section 301 suits.** During its 1963 term ending in 1964, the United States Supreme Court decided three cases involving contract actions under Section 301 of the Labor Management Relations Act. One held that in a case in which the union was seeking to compel arbitration of a discharge case under a collective bargaining agreement, no waiver of the right to arbitrate was to be implied because of a strike protesting the discharge, although the strike was a breach of the contract.<sup>1</sup>

Another case, *John Wiley & Sons, Inc. v. Livingston*,<sup>2</sup> held (1) that in any arbitration case in which an issue is raised as to compliance with any procedural prerequisites for arbitration, such issue is for the arbitrator to decide, and (2) that a successor corporation is bound to arbitrate under the collective bargaining agreement of its predecessor corporation.<sup>3</sup> The Court frankly recognized that an unconsenting successor to a contracting party would not be bound to the predecessor's contract under principles of law governing ordinary contracts, but it observed that "a collective bargaining agreement is not an ordinary contract" and "it is not in any real sense the simple product of a consensual relationship." The duty to arbitrate must be founded on a contract, the Court stated, but the "impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley [the successor] did not sign the contract being construed."<sup>4</sup> Insofar as companies subject to federal law are concerned, this deci-

<sup>9</sup> The opinion notes the two kinds of so-called jurisdictional disputes and then states: "If it is a work assignment dispute, arbitration conveniently fills a gap and avoids the necessity of a strike to bring the matter to the Board. If it is a representation matter, resort to arbitration may have a pervasive, curative effect even though one union is not a party."

"By allowing the dispute to go to arbitration its fragmentation is avoided to a substantial extent; and those conciliatory measures which Congress deemed vital to 'industrial peace' . . . and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area." *Id.* at 272, 84 Sup. Ct. at 409, 11 L. Ed. 2d at 328.

<sup>10</sup> *Ibid.*

<sup>11</sup> Prof. Robert F. Koretz, *Labor Law Decisions of the Supreme Court, 1963 Term*, a paper presented to the ABA Section of Labor Relations Law, Aug. 11, 1964. 56 L.R.R.M. 36. For other comments see footnote 52 of that address. *Id.* at 42.

§15.3. <sup>1</sup> *Local Union No. 721 v. Needham Packing Co.*, 376 U.S. 247, 84 Sup. Ct. 773, 11 L. Ed. 2d 680 (1964).

<sup>2</sup> 376 U.S. 543, 84 Sup. Ct. 909, 11 L. Ed. 2d 898 (1964).

<sup>3</sup> The Court held that this latter question was a point of law for the court to settle.

<sup>4</sup> 376 U.S. 543, 549, 84 Sup. Ct. 909, 914, 11 L. Ed. 2d 898, 905 (1964).

sion may affect the long-standing rule of Massachusetts law that a successor is bound by a predecessor's labor contract only if the successor assumed it as an obligation.<sup>5</sup>

The third Section 301 case arose out of an absorption of one company's business by another company, the employees of both companies being represented by the same union. The parties set up a joint employer-union committee to determine the question of seniority, and it decided to merge the seniority lists. A dissenting group of employees brought action in the Kentucky courts alleging that their individual rights had been violated. The United States Supreme Court held that although they had stated a *prima facie* cause of action under Section 301, they could not prevail on the merits because the joint committee's decision was within its contractual powers and did not involve a breach of the duty of fair representation. It will be of considerable comfort to both employers and unions to know that it is not a violation of the union's duty of fair representation for it to take "a good faith position contrary to that of some individual whom it represents" or to support "the position of one group of employees against that of another" in the absence of fraud, deceitful action, dishonest conduct, or "action based upon capricious or arbitrary factors."<sup>6</sup>

§15.4. **Federal decisions in Massachusetts.** The Court of Appeals for the First Circuit and the Federal District Court for Massachusetts had their share of labor decisions during the 1964 SURVEY year, but they involved no major developments. Perhaps of greatest significance in this area is the fact that the NLRB continues to have a hard time in the First Circuit, with more Board orders set aside in whole or in part, or remanded, than are enforced, along with frequent caustic comments by the court critical of the Board.<sup>1</sup> In the area of Section 301 suits, one case is worthy of comment. A union brought a Section 301 action in federal district court to compel arbitration under a collective bargaining agreement. The plaintiff's motion for summary judgment was allowed, and the First Circuit affirmed in a *per curiam* decision.<sup>2</sup> The district court held that the existence of

<sup>5</sup> *Berry v. Old South Engraving Co.*, 283 Mass. 441, 186 N.E. 601 (1933). Whether the successor is unqualifiedly bound by all of the provisions of the predecessor's collective bargaining agreement or only by the arbitration proceedings is open to some question. Compare *United Steelworkers v. Reliance Universal, Inc.*, 335 F.2d 891 (3d Cir. 1964), with *Wackenhut Corp. v. United Plant Guard Workers*, 332 F.2d 954 (9th Cir. 1964).

<sup>6</sup> *Humphrey v. Moore*, 375 U.S. 335, 350, 84 Sup. Ct. 363, 371, 11 L. Ed. 2d 370, 382 (1964).

§15.4. <sup>1</sup> See *NLRB v. Almeida Bus Lines*, 333 F.2d 725 (1st Cir. 1964); *NLRB v. Prince Macaroni Co.*, 329 F.2d 803 (1st Cir. 1964); *NLRB v. Gorbea, Perez*, 328 F.2d 679 (1st Cir. 1964); *NLRB v. Metropolitan Life Insurance Co.*, 327 F.2d 906 (1st Cir. 1964); *Raytheon Co. v. NLRB*, 326 F.2d 471 (1st Cir. 1964).

<sup>2</sup> *Shoe Workers v. Moranne Shoe Co.*, 222 F. Supp. 826, 55 L.R.R.M. 2521 (D. Mass. 1963), *aff'd per curiam*, 323 F.2d 870, 55 L.R.R.M. 2580 (1st Cir. 1963).

a remedy under the Massachusetts labor arbitration statute<sup>3</sup> did not affect the federal court's jurisdiction. The court also ruled that the dispute was arbitrable but added: "This is not to suggest, however, that the arbitrator may not make an independent determination of arbitrability in accordance with the power given him under the agreement."<sup>4</sup>

Among other interesting decisions were two that granted relief to individuals asserting rights against their unions under the Landrum-Griffin Act,<sup>5</sup> one case denying court intervention in NLRB election cases, in line with a recent Supreme Court decision,<sup>6</sup> and a district court case denying a preliminary injunction to compel arbitration of a discharge, since granting this injunction would prematurely give the complete relief sought.<sup>7</sup>

### C. MASSACHUSETTS DECISIONS

§15.5. **Employment security.** *Wheeler v. Director of the Division of Employment Security*<sup>1</sup> arose out of the denial of unemployment benefits to an airplane pilot who was idled because of a strike of the flight engineers, who were represented by a different union. The denial of benefits was upheld because the pilot was found to be "directly interested in the strike," within the meaning of the statutory disqualification provision relating to labor disputes.<sup>2</sup> One is "directly interested" if "his wages, hours, and conditions of employment will be affected favorably or adversely by the outcome." It is immaterial whether the individual himself is on strike or is a member of the union which is on strike.

Another Massachusetts decision under the same statute raises some interesting questions of legal theory.<sup>3</sup> It arose out of the much-litigated *Worcester Telegram* strike.<sup>4</sup> The claimants, who had been

<sup>3</sup> G.L., c. 150C.

<sup>4</sup> *Shoe Workers v. Moranne Shoe Co.*, 222 F. Supp. 826, 828 (D. Mass. 1963).

<sup>5</sup> *Hotel and Restaurant Workers Union v. Del Valle*, 328 F.2d 885 (1st Cir. 1964), cert. denied, 379 U.S. 879 (1964); *Leonard v. MIT Employees' Assn.*, 225 F. Supp. 937 (D. Mass. 1964).

<sup>6</sup> *Alpert v. Star Market Co.*, 227 F. Supp. 459 (D. Mass. 1964), vacated as moot, 57 L.R.R.M. 1172 (1st Cir. 1964). See *Boire v. Greyhound Corp.*, 376 U.S. 473, 84 Sup. Ct. 894, 11 L. Ed. 2d 849 (1964).

<sup>7</sup> *Steelworkers v. C. F. Wright Steel & Wire Co.*, 56 L.R.R.M. 2879 (D. Mass. 1964).

In another interesting case the district court ordered arbitration although there was a protest strike in breach of contract. *Street Employees v. Trailways of New England*, 56 L.R.R.M. 2180 (D. Mass. 1964). In this case, the court had occasion to follow two decisions of the Supreme Court of the United States, the *Needham Packing* case and the *Wiley* case. See nn. 1, 2, §15.3 *supra*.

§15.5. <sup>1</sup> 1964 Mass. Adv. Sh. 1083, 200 N.E.2d 272.

<sup>2</sup> G.L., c. 151A, §25, as amended by Acts of 1959, c. 554.

<sup>3</sup> *Worcester Telegram Publishing Co. v. Director of the Division of Employment Security*, 1964 Mass. Adv. Sh. 827, 198 N.E.2d 892.

<sup>4</sup> See *International Typographical Union v. NLRB*, 365 U.S. 705, 81 Sup. Ct. 855, 6 L. Ed. 2d 36 (1961), rehearing denied, 366 U.S. 941, 81 Sup. Ct. 1658, 6 L. Ed. 2d 853 (1961).



employees of the *Telegram*, struck on November 29, 1957. The strikers were replaced, and the employment security director allowed the claims from February 16, 1958. As a result of NLRB and court proceedings, the strike was found to be unlawful as a union unfair labor practice. The Board of Review affirmed the director's allowance of benefits, but the district court reversed. The Supreme Judicial Court, in turn, reversed the district court, agreeing with the Board of Review. The Court held (1) that the Board was not required by General Laws, Chapter 151A and the precedent of the *Howard Bros. Mfg. Co.* case<sup>5</sup> to determine whether the claimants' strike was a violation of the National Labor Relations Act, and (2) that the receipt of strike benefits did not disqualify the claimants for unemployment benefits. In the *Howard Bros.* case the Court had held that employees who went on strike in violation of contract had "left [their] work . . . without good cause attributable to the employing unit."<sup>6</sup> The Court does not overrule this holding, but does not extend it. "We hold that the principle of the *Howard Bros. Mfg. Co.* decision does not apply to a case where the asserted impropriety of the strike rests only upon the determination of whether an unfair labor practice or other violation of the National Labor Relations Act gives rise to the strike."<sup>7</sup> The Court noted the difficulty the Employment Security Division would have in making such determinations and the inappropriateness of that agency's making them.

The result is a sound one if, in fact, the original labor dispute has ended when the claims are filed, but is highly debatable if the strikers, even if they have been replaced, are still pursuing their strike by picketing at the time their unemployment claims are filed. It would seem that here, as in the *Howard* case, the basic question should be whether the provision in regard to leaving work without good cause has any relevance in a strike situation in which the leaving is intended to be only temporary, not permanent. It would seem to make more labor relations sense to confine the leaving clause to the familiar voluntary quitting category, which results in a termination of the employee-employer relationship. A strike does not have this effect. It appears from the Court's opinion that the claimants did not argue that they were entitled to benefits while on strike and prior to the termination of the stoppage of work but based their case for benefits after that date upon the theory that the stoppage of work ended when the company replaced them and resumed substantially normal production. It would seem the claimants' theory is supportable, provided the labor dispute has also ended. The opinion does not indicate whether the claimants continued to picket after they were replaced.

<sup>5</sup> *Howard Bros. Manufacturing Co. v. Director of the Division of Employment Security*, 333 Mass. 244, 130 N.E.2d 108 (1955). The Court specifically cited the comments on the *Howard* case in 1956 Ann. Surv. Mass. Law §14.4.

<sup>6</sup> 1964 Mass. Adv. Sh. 827, 833, 198 N.E.2d 892, 897.

<sup>7</sup> *Ibid.*

In the light of the employer's right under federal labor law to replace economic strikers, and the repeated refusal of the Massachusetts legislature to amend the statute to pay unemployment benefits to strikers even after a waiting period of some weeks, it would seem anomalous for replaced strikers to be receiving benefits while still carrying on picketing or boycott activities against the employer. It would be different, of course, if the labor dispute itself had been terminated in all respects.

#### D. MASSACHUSETTS LEGISLATION

**§15.6. Nurses: Collective bargaining, strike ban, and compulsory arbitration.** Chapter 576 of the Acts of 1964<sup>1</sup> is an explosive and precedent-shattering piece of legislation in the labor relations field. In extending the right of collective bargaining to nurses<sup>2</sup> in hospitals and other health care facilities<sup>3</sup> by including them within the coverage of the state labor relations law,<sup>4</sup> the legislature also amended that law in these two important respects: (1) It made it an unfair labor practice for nurses to engage in a strike or slowdown at a health care facility, and for their representatives or any other persons to induce or encourage such strike or slowdown; and it also made it an unfair labor practice for a health care facility to lock out the nurses. (2) It provided for the compulsory arbitration of all grievances and disputes between the nurses and hospitals concerning wages, hours, and conditions of employment.

At least in recent years, no other state has declared a primary peaceful economic strike to be unlawful and subject to restraint in the absence of any finding of emergency or imminent danger to public health or safety. Nor has any other state enacted a compulsory arbitration law.<sup>5</sup> The first such law was the special resolution of

<sup>1</sup> §15.6. 1 Effective December 31, 1964.

<sup>2</sup> "Nurses" includes both professional registered nurses and licensed practical nurses. The statute provides, however, that the Board may decide that a "profession" unit is appropriate and that "for purposes of this chapter, registered nurses and licensed practical nurses shall not be deemed to be members of the same particular profession, thus permitting separate units of each." Acts of 1964, c. 576, §5(b).

<sup>3</sup> Health care facilities are defined broadly to include all types of hospitals, including those which are governmental, nonprofit, or charitable; clinics, convalescent and nursing homes, visiting nurses associations, public health agencies, and any related facilities.

In 1946 nonprofit hospitals were held not to be covered by the state Labor Relations Act because they are not engaged in "trade or industry." *St. Luke's Hospital v. Labor Relations Commission*, 320 Mass. 467, 70 N.E.2d 10 (1946). A bill in the 1964 session of the legislature to bring nonprofit charitable and educational institutions within coverage of the state Labor Relations Act for all purposes failed of enactment. House Bill No. 964 (1964).

<sup>4</sup> G.L., c. 150A.

<sup>5</sup> The Massachusetts Schlichter Act, G.L., c. 150B, used various procedures including state seizure for dealing with emergency disputes but did not embrace compulsory arbitration. See 1963 Ann. Surv. Mass. Law §14.5 for comment on the

Congress in 1963 requiring arbitration of the then-existing railroad dispute.<sup>6</sup> As noted in the 1963 ANNUAL SURVEY,<sup>7</sup> labor criticized this legislation as "the opening wedge to compulsory arbitration of labor disputes." Opposition to compulsory arbitration is one point on which management agrees with labor. If compulsory arbitration is extended to other fields, historians will note these limited beginnings affecting railroads and nurses. Legislators and the public appear to have far less distaste for compulsory arbitration than management and labor.<sup>8</sup> Thorny issues are sure to arise if the statutory provisions are invoked, and constitutional questions may well be raised.<sup>9</sup>

**§15.7. Labor relations and public employees.** Efforts begun by the legislature in 1958<sup>1</sup> to give formal sanction to unions representing governmental employees have been continued. A 1964 statute provides that the Commonwealth "shall grant recognition to employee organizations" and state agencies are authorized to enter into agreements with unions "relative to conditions of employment" which do not conflict with statutes or rules and regulations.<sup>2</sup> The state director of personnel is authorized to establish procedures for determining "appropriate employee units," and he is directed to use the Massachusetts Labor Relations Commission and the procedures of Chapter 150A (the state Labor Relations Act) for resolving "disputes or questions of recognition." Lack of such procedures was noted in a previous ANNUAL SURVEY<sup>3</sup> as a defect in a prior law on this subject.

This same statute declares a strike or slowdown by state employees to be an unfair labor practice and likewise bans the inducement or encouragement of such a strike by any person. There is nothing to indicate how such an unfair labor practice is to be remedied, and this provision has no cross-reference to Chapter 150A of the General Laws, as there is in the provision on recognition disputes in the same statute. If it was intended to make the procedures of the state Labor

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doubtful status of the Schlichter Act for other reasons. Even during the war, the War Labor Board's decisions were not legally binding on the parties. Government seizure was used if there was an emergency dispute.

<sup>6</sup> 77 Stat. 132 (1963), 45 U.S.C.A. §157 (Supp. 1963).

<sup>7</sup> 1963 Ann. Surv. Mass. Law §14.2.

<sup>8</sup> As respected a columnist as Walter Lippman has written in favor of compulsory arbitration.

<sup>9</sup> Does the federal pre-emption rule apply to the denial of the nurses' right to strike or to the exemption of hospitals under the National Labor Relations Act? If the union shop issue is raised in arbitration, will the arbitrator force non-members to join the union? This was one of the War Labor Board's most difficult problems, and it developed its maintenance-of-membership policy as a compromise. Are denial of the right to strike and compulsory arbitration constitutional? Is a statute giving collective bargaining rights to one class of a charitable hospital's employees constitutional if it denies the same right to all other employees of the hospital?

§15.7. <sup>1</sup> 1958 Ann. Surv. Mass. Law §15.4.

<sup>2</sup> Acts of 1964, c. 637.

<sup>3</sup> 1958 Ann. Surv. Mass. Law §15.4.

Relations Commission available for remedying such an unfair labor practice, it is doubtful that it was further intended to make such an administrative remedy exclusive, thus depriving the Commonwealth of immediate resort to the courts for injunctive relief.<sup>4</sup> Another part of the new law elaborates upon the right of state employees to form or join unions or to refrain from so doing and permits state employees to act as union representatives if their activities are not "incompatible" with law or official duties; the incompatibility is to be determined by the state director of personnel. The prior law on this subject was not repealed.<sup>5</sup>

In addition to this statute on unions of governmental employees, the legislature continued to enact statutory provisions covering many of the issues that are often matters of collective bargaining or personnel administration in private industry.<sup>6</sup> For example, when a holiday falls on a Saturday, state employees are to be given the preceding Friday off with pay.<sup>7</sup> A new requirement for the posting of "promotional bulletins" before filling positions in the classified labor service<sup>8</sup> is reminiscent of the job-posting procedures found in many industrial labor contracts. A member of a public library staff may be granted up to a year's leave of absence with pay for study or research, but with a novel proviso. The individual must agree in writing to serve the library for a period twice as long as the leave after returning, and to make a proportionate refund if he or she defaults.<sup>9</sup>

§15.8. **Employment security.** Strikers not recalled to work within one week following the termination of the strike may now receive unemployment benefits if otherwise qualified.<sup>1</sup> Several other amendments to the Employment Security Act were also adopted.<sup>2</sup>

§15.9. **Sunday work.** The so-called "Sabbatarian Amendment"<sup>1</sup> was added to the 1962 revision of the Sunday laws.<sup>2</sup> A number of other amendments to the Sunday laws were also enacted.<sup>3</sup>

<sup>4</sup> *Hansen v. Commonwealth*, 344 Mass. 214, 181 N.E.2d 843 (1962), noted in 1962 Ann. Surv. Mass. Law §14.5.

<sup>5</sup> G.L., c. 149, §178D. This includes "political subdivisions" as well as the Commonwealth.

<sup>6</sup> Some of the laws affecting public employees which were amended during the year were those relating to the checkoff of union dues (Acts of 1964, cc. 343, 431), subsidization of contributory group hospital, surgical, and medical insurance for elderly retirees (Id., c. 461), and the purchase of stormy-weather work clothes for municipal employees (Id., c. 90).

<sup>7</sup> Id., c. 423.

<sup>8</sup> Id., c. 521.

<sup>9</sup> Id., c. 150.

§15.8. <sup>1</sup> Acts of 1964, c. 355.

<sup>2</sup> Certain confidential records of the Employment Security Division will hereafter be available in the trial of homicide cases (Id., c. 302), and changes were made in the provisions relating to election of coverage by nonprofit institutions (Id., c. 454).

§15.9. <sup>1</sup> One who believes that Saturday should be observed as the Sabbath and observes it by closing his places of business on that day may keep open on Sunday.

<sup>2</sup> Acts of 1964, c. 216.

<sup>3</sup> The calcining of lime is permitted on Sunday (Acts of 1964, c. 9). The process-

§15.10. **Miscellaneous legislation.** The minimum wage was prospectively increased to \$1.30 per hour effective September 5, 1965, and to \$1.35 per hour effective September 5, 1966, both rates being subject to a new proviso making them effective for employees engaged in manufacturing occupations only when the federal minimum wage is equal to or higher than these new rates.<sup>1</sup> Payments to supplementary unemployment benefit funds are now to be included in the establishment of wage rates to be paid on public construction projects.<sup>2</sup> Age requirements have been stricken from the application for examination for nurses.<sup>3</sup> Employment agencies will be subject to extensive regulations in respect to their procuring the employment of residents of other states as domestic and household workers in Massachusetts.<sup>4</sup> Oil burner technicians must take and pass an examination and be certified.<sup>5</sup> The penalty for willful failure of an employer to make agreed contributions to welfare and pension funds has been increased from a fine of fifty dollars and imprisonment of two months to five hundred dollars and one year.<sup>6</sup> Any employer in construction work who requires or knowingly permits any employee to use stilts in his work will be punished by a fine of not more than one hundred dollars, with each violation a separate offense.<sup>7</sup>

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ing of laundry for hospitals, rest homes, and doctors' offices is permitted on all legal holidays, including those to which the Sunday laws apply (*Id.*, c. 293). There has also been an amendment to that section of the Sunday law relating to the issuance of permits for Sunday work (*Id.*, c. 384).

§15.10. <sup>1</sup> Acts of 1964, c. 644.

<sup>2</sup> *Id.*, c. 609.

<sup>3</sup> *Id.*, c. 21.

<sup>4</sup> *Id.*, c. 670.

<sup>5</sup> *Id.*, c. 680.

<sup>6</sup> *Id.*, c. 467.

<sup>7</sup> *Id.*, c. 233.